(3)

IN THE HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGARH

WRIT PETITION No. 579 OF 2003

PETITIONER

R. N. Singh, aged about 56 years, S/o Shri H. R. Singh, working as Commercial Tax Inspector, O/o Commercial Tax Officer, Bilaspur Circle-1, Bilaspur (Chhattisgarh)

Versus

RESPONDENTS

1. State of Chhattisgarh through the Secretary, Department of Commercial Tax, DKS Bhawan, Mantralaya,Raipur (Chhattisgarh)
2. Commissioner, Commercial Tax, Raipur (Chhattisgarh)
3. State of Madhya Pradesh through the Principal Secretary, Department of Commercial Tax, Vallabh Bhawan, Bhopal (M. P.)
4. Commissioner, Commercial Tax, Indore (Madhya Pradesh)

P. R. No. ... Presented by Shri S.R.T. ... dated ... 06.02.03 ...

CERTIFIED COPY ... BILASPUR

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA

(145) AFR

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HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No. 579 of 2003

Petitioner : R.N. Singh

Versus

Respondents : State of Chhattisgarh & others

Post for order on 22nd May, 2006

Sd/-
Satish K. Agnihotri
Judge

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HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No. 579 of 2003

Petitioner : R.N. Singh

Versus

Respondents : State of Chhattisgarh & others

Single Bench: Hon'ble Mr. Justice **Satish K. Agnihotri**.

Shri Prafull Bharat, counsel for the Petitioner.

Smt. Anju Ahuja, Deputy Government Advocate for the respondents No. 1 and 2.

None for the respondents No. 3 and 4.

ORDER

(2nd May, 2006)

1. The present writ petition filed under Article 226/227 of the Constitution of India impugns the show cause notice dated 8.10.1996 (Annexure P/1) and further the petitioner seeks a writ of mandamus against the respondents to consider his case for grant of promotion to the post of the Commercial Tax Officer from the date the petitioner's juniors have been promoted, together with consequential benefits like seniority, back wages etc. along with interest at the rate of 18% per annum. This petition was filed on 6.2.2003.

2. The admitted facts in nutshell are that, the petitioner was appointed as Sales Tax Inspector by order dated 21.1.1972. In 1976 a departmental enquiry was initiated against him on certain acts of misconduct. On 6.6.80 the disciplinary

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authority passed an order stopping four increments with cumulative effect.

3. The petitioner filed an appeal to the State Government which is the appellate authority. The State Government allowed the appeal, set aside the penalty and only gave a warning to the petitioner.

4. On 23.10.80 (Annexure P/4) a second departmental enquiry on different charges of misconduct was initiated against the petitioner. On 22.12.86 the disciplinary authority passed an order removing the petitioner from service. The petitioner filed an appeal before the State Government. On 23.6.87 the State Government allowed the appeal, set aside the order of removal and directed reinstatement of the petitioner (Annexure P/5). The petitioner joined his duties after his reinstatement and the Commissioner of Sales Tax regularized the service by order dated 9.7.87 (Annexure P/6).

5. Thereafter the Commissioner of Sales Tax wrote a letter dated 30th December, 1987, to the Principal Secretary, Separate Revenue Department for reviewing the order of the State Government. On 29.8.89 (Annexure P/12) the State Government reviewed the order, passed earlier, imposed a major penalty of compulsory retirement.

6. The petitioner challenged the order of review imposing the penalty of compulsory retirement before the M.P. State Administrative Tribunal, Bench at Jabalpur in O.A. No. 2514/1989. Learned Administrative Tribunal after having considered the case on merit held as under:-

"The reviewing disciplinary authority infact reviewed and reversed the order passed by the appellate authority i.e. the State Government and thereafter imposed a major penalty when the appellate authority had exonerated the applicant. It is the order of the appellate authority which has been reviewed by the State Government"

and quashed the order dated 29.8.1989 (Annexure P/12) passed in review, on 14.8.1990 (Annexure P/13).

7. After a period of 6 years, the respondent No. 3/State of Madhya Pradesh issued a show cause notice on 8.10.1996 on the ground that the order dated 29.8.1989 passed in review was quashed by the Madhya Pradesh State Administrative Tribunal on the ground that the petitioner was not afforded an opportunity of hearing before the order in review dated 29.8.1989 was passed.

8. The petitioner has filed this petition impugning the said show cause notice dated 8.10.1996 (Annexure P/1), on several grounds, inter alia that the respondent No. 3/State of Madhya Pradesh was not competent to initiate a fresh enquiry on the basis of the old charge-sheets dated 27.12.1976 (Annexure P/2) and dated 23.10.1980 (Annexure P/4), when the order passed by the disciplinary authority as well as by the appellate authority in review, has been quashed by the Madhya Predesh State Administrative Tribunal, which has attained finality and the case cannot be reopened again and further that the first order dated 23.6.1987 (Annexure P/5) passed in appeal can be reviewed only once, and the power of review was exercised on

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4.5.1988 (Annexure P/10) whereby the prayer for review was dismissed.

9. Shri Prafull Bharat, learned counsel appearing for the petitioner made his submissions, as stated above, in the petition. Learned counsel prayed for quashing of the show cause notice as being contrary to the rules and the provisions and further prayed for grant of consequential benefits, thereof.

10. Smt. Anju Ahuja, learned Deputy Government Advocate appearing for the respondents No. 1 and 2 submitted that the State of Chhattisgarh came into existence on 1.11.2000 and the show cause notice was issued prior to the bifurcation of the old State of Madhya Pradesh and as such the respondents No. 1 and 2 are not competent to reply the averments of the petition and submissions made by learned counsel for the petitioner.

11. In this petition, notice was issued on 1.4.2003 to all the respondents including the State of Madhya Pradesh and Commissioner, Commercial Tax, Indore (M.P.). Notices were duly served by registered A.D. Despite service, the respondents No. 3 and 4, i.e. present State of Madhya Preadesh and Commissioner, State of Madhya Pradesh, Commercial Tax, Indore, had chosen not to appear before this Court and as such neither any response was filed on behalf of the respondents No. 3 and 4 nor any counsel on their behalf has put in appearance.

12. Having heard learned counsel for the parties, I have perused the records appended to the petition and return filed by the respondents No. 1 and 2.

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13. It is clearly established that the Madhya Pradesh Administrative Tribunal while quashing the order in review passed by the State of Madhya Predesh in the name and on behalf of the Governor dated 29.8.1989, did not grant any liberty to the respondents to initiate a fresh enquiry. The order of the disciplinary authority dated 22.12.1986, removing the petitioner from service was set aside by order dated 23.6.1987 (Annexure P/5) in appeal passed by the respondent No. 3 in the name and on behalf of the Governor. Thereafter, prayer for review by the department was also dismissed on 4.5.1988 (Annexure P/10). The order dated 29.8.1989 passed in second review was modified and the major punishment of compulsory retirement was imposed. Learned Administrative Tribunal by order dated 14.8.1990 (Annexure P/13) quashed the order dated 29.8.1989 without granting any liberty to initiate a fresh departmental enquiry or issue a fresh show cause notice to the petitioner.

14. Rule 29 of the Madhya Pradesh Civil Services (Classification, Control and Appeal) Rules, 1966 which provides for giving reasonable opportunity of making a representation before passing an order by any reviewing authority, has also not complied with. Even otherwise, once the State Administrative Tribunal has considered the impugned order dated 29.8.1989 and quashed the same, the respondents have no authority to initiate a fresh departmental enquiry, contrary to the order passed by the State Administrative Tribunal on 14.8.1990 (Annexure P/13).

15. The Supreme Court in the case of **Escorts Farms Ltd., v. Commissioner, Kumanon Division, Nainital and others**[1] observed as under :-

> "Res judicata is a plea available in civil proceedings in accordance with Section 11 of the Code of Civil Procedure. It is a doctrine applied to give finality to 'lis' in original or appellate proceedings. The doctrine is substance means that an issue or a point decided and attaining finality should not be allowed to be reopened and re-agitated twice over. The literal meaning of res 'everything that may form an object of rights and includes an object, subject-matter or status' and res judicata literally means : 'a matter adjudged; a thing judicially acted upon or decided; a thing or matter settled by judgment.' Section 11 of CPC engrafts this doctrine with a purpose that 'a final judgment rendered by a Court of competent jurisdiction on the merits is conclusive as to the rights of the parties and their privies, and, as to them, constitutes an absolute bar to a subsequent action involving the same claim, demand or cause of action."

16. A matter adjudicated, adjusted finally between the parties involving the same cause of action cannot be re-agitated again before the tribunal or authority and is barred by principle of res-jedicata.

17. For the reasons stated-above, the impugned show cause notice dated 8.10.1996 (Annexure P/1), being incompetent and unconstitutional deserves to be quashed and is according quashed. The petitioner is entitled to all the consequential benefits, including seniority, difference of wages and consideration for promotion, if any, in accordance with the order dated 23.6.1987 (Annexure P/5) passed by the respondent No. 3.

18. Accordingly, the petition is allowed. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

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[1]AIR 2004 Supreme Court 2186